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October 9, 1992

Mr. S--- B---
P. O. Box XXXXXX
---, CA XXXXX-XXXX

Dear Mr. B---:

This is in response to your letter dated August 6, 1992. You ask whether sales tax would apply to your new business. You will provide a scholarship search and SAT preparation program and will provide a single unique copy of a report to each customer. More specifically, you state:

"For the scholarship search a student will complete a questionnaire in which they answer questions about their intended field of study, choice of schools, financial circumstances, etc (see attachment 1). They mail the questionnaire back to me which is then entered into a computer program at our national center which analyzes this information and prepares a personalized 40 page report detailing the grant, scholarship and student aid programs the student is most likely to qualify for, plus an outline illustrating the steps the student needs to take to apply and receive the maximum in student aid awards (see attachment 2).

"For the SAT preparation a student will begin by taking a simulated SAT test. Within three weeks the student receives complete scoring and analysis on each phase of the test, test taking strategies to solve each type of question they got wrong, how to find answers to questions they don't understand and steps they need to take to raise their scores (see attachment 3)."

Discussion

I note that you have not provided us a copy of the contract entered into between you and your customer nor any order forms that may have been completed by the customer to place an order with you. Furthermore, your manner of billing is not described. Also, although you mention an attachment 3, that attachment apparently was not in the package you sent us. For purposes of this opinion, I assume that the customer is billed a single lump sum, and that there is no separate itemization of that single lump sum. I further assume that there is nothing in the documents we have not reviewed, nor in any of your advertising for the matter under review, that is in conflict with any of the conclusions or assumptions contained herein.

Sales or use tax applies to retail sales of tangible personal property in California or for use in California. On the other hand, the providing of a service which is unrelated to the sale of tangible personal property is not subject to sales or use tax. Whether a particular transaction involves a sale of tangible personal property or instead involves the transfer of tangible personal property which is incidental to the performance of a service depends upon the true object of the contract. That is, the question is whether the true object of the customer was to obtain the service per se or the property produced by the service. If the true object is the service per se, the transaction is not subject to tax even though some tangible personal property is transferred. (Reg. 1501.)

With respect to the scholarship information, you apparently generate a report from a database in response to a questionnaire completed by the customer. We have previously concluded that a database operator is performing a service when responding to a unique request from a customer for information by providing a unique report. In your case, it appears that, in addition to the information which is unique to each customer, a portion of the report is identical for all customers (e.g., an outline to assist the customer in applying for student aid). I assume that the unique portions of each report are far larger than the identical portions and that nothing in your solicitations indicates that these identical portions are of equal or greater value than the unique portions.

The SAT test portion appears in some respects similar to the portion discussed above. Viewing the testing portion alone, the test and the scoring and analysis of each phase of the test would be regarded as a service. On the other hand, an identical booklet describing test taking strategies which is provided to all customers, if viewed alone, would be regarded as the selling of tangible personal property. I again assume that the unique portions provided to each customer are far greater than the identical portions and that nothing in your solicitations, contracts, or billings are inconsistent with the conclusion that the true object of the contract was for service.

Based upon your letter and the assumptions made herein, we conclude that you are providing a service. Your charge for this service would not be subject to sale or use tax. Since you are regarded as consuming the property you incidentally transfer to your customers, you may not purchase such property for resale. Rather, the sale of such property to you is subject to sales tax, or your use of the property is subject to use tax.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Senior Tax Counsel